

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JUSTIN RIVERA and
DWAYNE ANTHONY CONLEY,

Defendants.

19 Cr. 131 (PAE)


ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received the attached letter from counsel for Dwayne Anthony Conley, proposing an adjournment of Mr. Conley's trial, presumably until the second quarter of 2021, in light of developments regarding the COVID-19 pandemic. The Court will take up these issues at the next scheduled call involving all counsel and the defendants, which is scheduled for Monday, January 4, 2021, at 10:30 a.m. The Court would benefit from hearing the views of all parties on this question, and from elaboration by counsel for Mr. Conley. It is not clear from the letter received from Mr. Conley's counsel whether counsel conferred with Government counsel, or with counsel for co-defendant Justin Rivera, prior to proposing an adjournment; whether Mr. Conley proposes an adjournment of the entire trial, or only the trial against him; or whether Mr. Conley, who is detained pending trial, joins in the application for an adjournment made by his counsel. The Court accordingly directs Government counsel to organize a conference call tomorrow, December 29, 2020, among all counsel to discuss the range of issues raised by the letter. The Court further directs that, by noon on Thursday, December 31, 2020, counsel for the Government, and counsel for Mr. Rivera, separately file letters on the docket of this case setting forth their views. The Court also invites counsel for Mr. Conley, by the same date and time, to

submit a supplemental letter clarifying the scope of the adjournment request and whether Mr. Conley joins in it. Courtesy copies of all such letters are to be contemporaneously emailed to the Court's chambers.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: December 28, 2020
New York, New York

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JUDITH H. WEIL

December 28, 2020

Via Electronic Mail EngelmayerNYSDCChambers@nysd.uscourts.gov and ECF

Hon. Paul A. Engelmayer
Thurgood Marshall United States Courthouse
Courtroom 305
40 Foley Square New York, NY 10007

Re: US v. Randall (Dwayne Conley)
19 CR 131 (PAE)

Dear Judge Englemayer:

This is to request an immediate telephone conference to discuss the possibility of adjourning Mr. Conley's trial. The telephone conference should take place as quickly as possible so as to avoid the disclosure of 3500 material before another date is fixed.

At the time the Southern District's committee thought it would be safe to try the case on February 16, 2021, it could not have anticipated the drastic increase in the spread of the pandemic. It could not have anticipated that 63,000 Americans would die from COVID-19 in December, or that outbreaks would effectively close both the MCC and the MDC. It did not anticipate that millions of Americans would flaunt the CDC's directive to refrain from traveling and partying during Christmas and New Year's, making the prognosis for the next few weeks even more ominous. But on the positive side, no one anticipated such a rapid development of the vaccine, and the likelihood that despite the increase in immediate risk, we will be able to safely resume normal trials in the very near future.

Given the increasing risk posed by the pandemic and the fact that the pandemic's end appears to be in sight, a February 16, 2021 trial date risks much to gain little. I am personally uncomfortable working in the pens with Mr. Conley in the immediate aftermath of the predicted holiday spike and appearing in court in February. I believe that it is reasonable to conclude that the benefits of limited socialization for what we now know will be a relatively short duration outweigh its costs. I suspect that many potential jurors will reach the same conclusion, and that the venire reporting for jury duty in February will not be representative of the district's population and will exclude those potential jurors who are most capable of patiently and rationally weighing opposing views. It is quite possible that Mr. Conley will file a motion seeking to adjourn the trial on the grounds that he cannot obtain a fair trial if we are forced to go forward in February.

I recognize that this is a holiday week during which we are not scheduled to “meet.” But it would be unfair for me not to bring this to the Court’s and the parties’ attention before next week’s scheduled disclosure of 3500 material.

Sincerely

Lloyd Epstein
Lloyd Epstein

LE:pc

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(Via ECF and Email)

Mr. Dwayne Anthony Conley
(By Mail)